

EXHIBIT V

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART: JHO

-----X
ORLY GENDER, in her individual capacity
and on behalf of the Orly Genger 1993
Trust (both in its individual capacity and
on behalf of D & K Limited Partnership),

Plaintiff,

-against-

DALIA GENDER, SAGI GENDER, LEAH FANG, D&K
GP LLC, and TPR INVESTMENT ASSOCIATES, INC.,

Defendants.

-----X
Index No. 109749-2009
Case No. 1429

60 Centre Street
New York, New York
May 4, 2017

-AND-

-----X
ARIE GENDER and ORLY GENDER, in her
individual capacity and on behalf of the
ORLY GENDER 1993 TRUST,,

Plaintiffs,

-against-

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER 1993
TRUST, ROCHELLE FANG, individually and as
Trustee of the SAGI GENDER 1993 TRUST,
GLENCLOVA INVESTMENT CO., TR INVESTORS,
LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY
II, LLC, JULES TRUMP, EDDIE TRUMP, MARK
HIRSCH and TRANS-RESOURCES, INC.,

Defendants.

-----X
-CONTINUED-

Proceedings

-----X
SAGI GINGER, individually and as assignee
of THE SAGI GINGER 1993 TRUST, and TPR
INVESTMENT ASSOCIATES, INC.,

Cross-Claimants,
Counterclaimants, and
Third-Party Claimants,

-against-

ARIE GINGER, ORLY GINGER, GLENCOVA
INVESTMENT COMPANY, TR INVESTORS, LLC, NEW
TR EQUITY I, LLC, NEW TR EQUITY II LLC,
JULES TRUMP, EDDIE TRUMP, MARK HIRSCH,
TRANS-RESOURCES, INC., and WILLIAM DOWD,

Cross-Claim,
Counterclaim and/or
Third-Party Defendants.

-----X
Index No. 651089-2010
Case No. 1488

60 Centre Street
New York, New York
May 4, 2017

B E F O R E:

HONORABLE IRA GAMMERMAN, Justice

A P P E A R A N C E S:

KASOWITZ, BENSON, TORRES, LLP
Attorneys for the Plaintiff
1633 Broadway
New York, NY 10019
BY: ANDREW R. KURLAND, ESQ.
MICHAEL PAUL BOWEN, ESQ.

KELLEY DRYE & WARREN, LLP
Attorneys for the Defendant TPR
101 Park Avenue
New York, NY 10178
BY: JOHN DELLAPORTAS, ESQ.

Lisa A. Casey
Official Court Reporter

Proceedings

THE COURT: This case is 1429 in my computer.

By decision and order dated April 8th, 2016, Justice Jaffe referred this matter initially to me, and I'm quoting, the damages arising from defendants' breach of their fiduciary duties to plaintiff, and the value of the subject shares that were transferred in the February, 2009 auction, close quote. There was a consent clarification of that order of reference.

The judge indicated that all I was to consider and recommend was what the value was of the LP's TPR shares before the modification, however we had a rather long trial in this matter, over six days, on the 2nd, 3rd, 4th of August, and the 8th, 9th and 10th of that same month. I heard testimony from a lot of witnesses, including members of the Genger family, that's Dalia, Sagi and Orly; Sagi's mother-in-law, Rochelle Fang; a representative of the Trump Group, a man by the name of Mark Hirsch, and finally an expert witness and accountant named Samuel Gunther, called by the defendants.

Subsequently, post-trial memoranda was submitted by both sides. It's argued by Sagi Genger that no damages resulted from the breach of fiduciary duty, however Orly seeks an award of approximately \$85 million in damages, arriving at that number by arguing

Proceedings

that Sagi deprived her of a 48 percent share of TPR's cash, liquid investments, and net operating loss carry-forwards, which she claims adds up to in excess of \$25 million, and that Sagi then deprived her of a 48 percent share of TPR's holding in TRI shares, constituting additional damages that she estimates fell between \$36 and \$435 million, and seeks damages totaling almost \$60 million.

Based on the modification of the order of reference by Judge Jaffe, the matter only revolves around the value of the TPR shares, and I find that the value, based on, primarily, Mr. Gunther's testimony, was exactly what they were sold for, and that no damages were, therefore, suffered. His testimony was, as I recall, that a reasonable prospective investor would not have paid more than two and a half million dollars for what is, in essence, a minority interest in a company that had been losing money for many years, was not paying a dividend, and was not likely to pay a dividend.

Also, he testified, and I was somewhat persuaded by that testimony as well, that any prospective investor would be buying not only a minority interest, but into a company whose shareholders had an extraordinary history of litigation, and that litigation was likely to continue indefinitely, and that certainly

Proceedings

would have a negative impact. So with respect to that issue, I find that the shares had the value that -- that there was no loss sustained by the plaintiffs as a result of the shares, the sale of the shares.

Now, the other matter that -- that takes care of 1429. The next case is 1488. That was referred to me by Justice Jaffe in connection with a claim for attorneys' fees in connection with the, I guess, the preliminary injunction which tied up some fund for some period of time. Arie Genger obtained this preliminary injunction, or temporary restraining order, in 2011, which enjoined TPR from using certain escrowed funds, pending the further ruling. My recollection is that it was Justice Feinman who issued that order. I assume that the attorneys are familiar with the facts in that particular litigation.

The order of Judge Feinman ordered that the portion of plaintiffs' motions seeking to enjoin the defendants from making demands upon, or using, or spending the proceeds derived from purported sales to the Trump Group was granted, pending a determination by a court of competent jurisdiction of who was the beneficial owner of those shares. The Trump Group then brought a proceeding in Delaware against Arie Genger and TPR seeking to resolve that issue of that beneficial

Proceedings

owner of the shares.

TPR then brought a cross-claim and counterclaim in the Delaware action seeking to secure the release of the sale proceeds, and the Delaware Court, in February of 2013, granted summary judgment to the Trump Group, with respect to the beneficial ownership issue, but denied a cross-motion for a release of the enjoined funds, holding that the escrow agent can demand a formal vacating or modification of the injunction here in this court, before it agreed to distribute the funds.

An appeal was taken from the order of Judge Feinman, and a decision and order by the First Department. The Appellate Division granted the cross-appeal to dismiss all of the claims brought against TPR by Arie Genger, as a result of which the preliminary injunction was vacated.

In May of 2015, on May 19, Judge Jaffe, who now had the case, held that he would that TPR is entitled to recover reasonable and necessary fees and expenses incurred in opposing the preliminary injection and in prosecuting the appeal from Justice Feinman's order granting that relief. Justice Jaffe then referred the issue of legal fees and interest incurred to the Special Referee's calendar seeking a report with

Proceedings

recommendations.

TPR seeks an amount in excess of \$400,000. Incidentally, there's an amount included in that of \$20,149.85 which is being sought in connection with this fee application, and it seems to me that whether or not time spent or the legal fees incurred in preparing the fee application and litigating the fee award is something that Justice Jaffe should resolve, not for me, so that I'm not going to recommend, at this point, any portion of that request.

There is an issue, however, of proration, and Justice Jaffe, in her decision, reduced any legal fee to be recovered by 80 percent, reasoning that only \$1.5 million of the \$7.24 million at issue was not within the escrow funds; that \$5.74 million was escrowed not pursuant to the preliminary injunction.

Obviously, the attorney seeking the fee is not in accord with Justice Jaffe's 80 percent reduction, but that's something, again, to take up with her.

Counsel for plaintiff argues that the fee that's being sought is not to be awarded because there's no evidence that fees were actually paid. My position is that payment is irrelevant, and therefore I don't consider that a basis to deny the fee application solely for that reason.

Proceedings

Turning to the argument that the invoices include charges for work in connection with appeals on the underlying claims, as opposed to only the propriety of an injunction, and that therefore the party seeking the fee is entitled to recover, at most, something in the neighborhood of \$5,000 or \$6,000, Judge Jaffe's decision, as I note, states, and I'm quoting, TPR is entitled to recover reasonable and necessary fees and expenses incurred in opposing the preliminary injunction and of prosecuting the appeal. The appeal involved a little more -- actually, the appeal resulted in the dismissal of the action, which accomplished the vacating of the preliminary injunction. As I read the language, the party seeking the fee is entitled to fees incurred in prosecuting the appeal, even though the appeal involved more than an appeal from the preliminary injunction.

Turning to the invoices submitted, I find that the attorney and paralegal rates that are charged are comparable to those charged by attorneys and paralegals doing the type of work involved in this action, particularly in connection with the relative complexity of the action. I'm reducing, however, by an additional ten percent, the amount I'm recommending because of some blocked billing that's contained in the invoices. The

Proceedings

party seeking fees has already reduced all block-billing charges that include redactions by the 50 percent, but I find that a further reduction is warranted. Obviously, the failure to set forth individual tasks makes it much more difficult to evaluate whether or not the amount of time spent on a particular aspect of the legal work was reasonable.

Accordingly, I'm recommending to Justice Jaffe that the attorney fee award be \$70,296.54.

off the record.

(Whereupon, an off-the-record discussion took place.)

THE COURT: Back on the record.

Presumably somebody is going to make a motion to Justice Jaffe to confirm or disaffirm my recommendation, but that's up to you fellows.

MR. DELLAPORTAS: The order is on the record, your Honor. Order will be essentially, the --

(Continued on the next page.)

Proceedings

THE COURT: My recommendation is included in the transcript. I recommended, in connection with the first case, no damages, and in connection with the second case the amount I've indicated on the record.

MR. BOWEN: Yes. Thank you.

MR. KURLAND: Thank you.

* * * * *

Certified to be a true and accurate transcription of the above-entitled matter.

Lisa A. Casey
Senior Court Reporter